

General Information Letter: The determination of whether or not a taxpayer has nexus depends on the specific facts and circumstances of each case, and is generally not an appropriate subject for letter rulings.

February 16, 2001

Dear:

This is in response to your letter to Maurya Beckum of this Department. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c), which can be obtained at the following website:

<http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated the following:

Thanks for taking the time to discuss the various rules and regulations regarding the subject of nexus.

To insure that we are correctly abiding by the laws of Illinois, I would greatly appreciate a ruling from your legal department regarding our status with filing income tax and sales tax returns, i.e., do we have nexus in the State of Illinois?

I summarize the relevant parameters below:

- A) xxxxxxxxxxxxxxxxxxxxxxxxxxxx is a Maryland based corporation.
- B) The company employs a sales manager who is an Illinois resident.
- C) The company does not have a warehouse or principal business located in Illinois.
- D) The Illinois employee either works out of his house or travels amongst various other states.
- E) The Illinois employee does not have the authority to sign or enter into any binding legal agreements. Only the President or myself may enter into a legal agreement.
- F) The Illinois employee only sells to commercial accounts that resell to the end consumer.
- G) xxxxxxxxxxxxxxxxxxxxxxxxxxxx plans to sell our product line over the Internet for 2001 and beyond. These sales will be direct to the end consumer.

Response

Because the determination of nexus is dependent upon the details of each taxpayer's activities within the State, this Department issues no individual prospective rulings on the issue. Such a determination is only made within the context of an audit where the Department can gain access to all relevant information. However, some general principles can be provided.

Due Process and Commerce Clauses of the United States Constitution limit the power of states to tax interstate taxpayers. The Due Process Clause requires some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298,

112 S. Ct. 1904 (1992)). The Commerce Clause requires that the state's tax be applied to activities that create substantial nexus with the state (Id.). Substantial nexus could be created by continued or repeated presence within a state of a single employee of the taxpayer.

However, Congress enacted a statute that further limits state taxation. Public Law 86-272 provides that a state may not:

. . . impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

From the description of the single employee's activities within Illinois, your presence in this State may be protected by PL 86-272 from income taxation. If so, care should always be taken to insure that an employee not go beyond the prescriptions of the federal statute in order for a company to continue to enjoy the protection.

Please do not hesitate to call me at (217) 782-2844 if you have further questions. As stated above, this is a general information letter that does not constitute a statement of policy that applies, interprets or prescribes tax law. It is not binding on the Department as a definitive statement of law. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax